

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

U.S. HEAVY MACHINERY, LLC

PLAINTIFF

V.

CIVIL CASE NO. 4:19-cv-00280

**ALLSTATE INSURANCE
COMPANY**

DEFENDANT.

**MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF ALLSTATE INSURANCE COMPANY**

Defendant, Allstate Insurance Company (“Allstate”), a Write-Your-Own (“WYO”) Program carrier participating in the U.S. Government’s National Flood Insurance Program (“NFIP”) pursuant to the National Flood Insurance Act of 1968, as amended (“NFIA”),¹ appearing herein in its “fiduciary”² capacity as the “fiscal agent”³ of the United States at the expense of the U. S. government, respectfully files this Motion for Summary Judgment. Plaintiff’s claims against Allstate for breach of contract fail as a matter of law because there are no genuine issues of material fact that Plaintiff failed to timely submit a Proof of Loss supported by sufficient documentation of the loss in accordance with Article VII(J) of the Standard Flood Insurance Policy (“SFIP”). As a result, Plaintiff also failed to satisfy the conditions precedent to filing this suit as per Article VII (R) of the SFIP. Plaintiff’s failures serve as a complete bar to recovery as a matter of law. *Ferraro v. Liberty Mut. Fire Ins. Co.*, 796 F.3d 529, 532 (5th Cir.

¹ See 42 U.S.C. §4001 *et seq.*

² 44 C.F.R. §62.23(f).

³ 42 U.S.C. §4071(a)(1); *Gowland v. Aetna*, 143 F.3d 951, 953 (5th Cir. 1998).

2015). It follows that Allstate is entitled to Summary Judgment, and Plaintiff's claims against Allstate for breach of contract must be dismissed with prejudice. *Id.*

For the reasons set forth herein, in the memorandum filed in support of this Motion, and in the Appendix filed in support of this Motion, Defendant, Allstate Insurance Company, prays that this Honorable Court grant its Motion for Summary Judgment and dismiss all of Plaintiff's claims against it with prejudice and at Plaintiff's cost.

Respectfully submitted, this the 24th day of June, 2020.

Butler Snow LLP

/s/ Paul S. Murphy

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CERTIFICATE OF CONFERENCE

By my signature below, I certify that I have conferred with counsel for the Plaintiff regarding the substance of this Motion, and the relief requested herein, and counsel for the Plaintiff has indicated Plaintiff's intention to oppose this Motion and the relief requested herein.

/s/ Paul S. Murphy

CERTIFICATE OF SERVICE

By my signature below, I certify that a true and correct copy of this document was served on all counsel of record via the Court's CM/ECF system and in accordance with the Federal Rules of Civil Procedure.

/s/ Paul S. Murphy